

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

METAL CHEM, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:22-cv-00140-MPB-MJD
	)	
PBBT, INC.,	)	
	)	
Defendant.	)	
	)	

**ORDER ON MOTION TO COMPEL**

This matter is before the Court on Plaintiff's Motion to Compel. [[Dkt. 35.](#)] For the reasons and to the extent set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's motion.

**I. Background**

Plaintiff Metal Chem, Inc. ("Metal Chem") brings this action against Defendant PBTT, Inc. ("PBTT"). At issue is the right to payment for goods and services rendered. PBTT ordered metal finishing chemicals and supplies from Metal Chem from June 2017 to July 2020; Metal Chem alleges that PBTT has failed to comply with the parties' contract by refusing to pay for the goods and services. PBTT asserts the goods were nonconforming and defective and filed counterclaims for breach of warranty and breach of contract. Relevant to the instant motion, Plaintiff asserts that non-party Debbie Maguire, a former management level employee of PBTT who has firsthand knowledge of the facts alleged in the pleadings in this matter, accepted service of a non-party subpoena, did not object to the subpoena, and did not file a motion for a protective order. [[Dkt. 35.](#)]

## II. DISCUSSION

In the instant motion, Plaintiff seeks an order compelling non-party Maguire to produce communications and documents regarding both parties as well as PBTT's affirmative defenses. [Dkt. 35 at 1.] They also seek an order holding Maguire in contempt and issuing sanctions, specifically requesting the court order Maguire to pay the reasonable fees and costs of filing the motion to Metal Chem. Non-party Maguire was served with this motion, [Dkt. 35 at 5], and neither Defendant PBTT nor non-party Maguire filed any response or objection thereto.

### A. Document Requests

With regard to requesting discovery from non-parties, Rule 45 of the Federal Rules of Civil Procedure outlines the procedures for serving a third party with a subpoena for testimony or document production. Fed. R. Civ. P. 45. When seeking such evidence from a non-party, the party issuing the subpoena "must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Fed. R. Civ. P. 45(d)(1). Additionally, while the third party may timely object to the requested production, the serving party then "may move the court ... for an order compelling production or inspection" of the requested materials. Fed. R. Civ. P. 45(d)(2). Ultimately, this Court has "broad discretion in discovery matters, [including when ruling on a] motion to compel discovery." *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 646 (7th Cir.2001).

Here, there are no contested issues regarding the Subpoena. In fact, Maguire has agreed to produce records in compliance with the subpoena. [Dkt. 35 at 2.] Nevertheless, Maguire has failed to comply with the subpoena or otherwise respond to the subpoena or the instant motion, subjecting the motion to summary ruling under Local Rule 7(c)(5). Accordingly, the Court **GRANTS** Metal Chem's motion to compel Maguire to comply with the subpoena.

## **B. Sanctions**

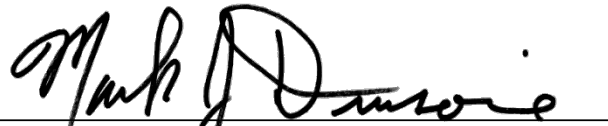
Rule 45(g) provides that the issuing court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena." [Fed. R. Civ. P. 45\(g\)](#). While it is clear that Maguire has both failed to comply with the subpoena and failed to timely seek any other relief, her conduct has not yet been egregious enough to warrant sanctions or a finding of contempt. However, if Maguire fails to timely comply with this Order, the Court will recommend that she be held in contempt and be subject to appropriate sanctions.

## **III. Conclusion**

Plaintiff's motion to compel [\[Dkt. 35\]](#) is **GRANTED** as to the subpoena, [\[Dkt. 35-1\]](#), and **DENIED** in all other respects. Non-party Maguire shall comply with the subpoena **on or before May 15, 2023**.

SO ORDERED.

Dated: 27 APR 2023



Mark J. Dinsmore  
United States Magistrate Judge  
Southern District of Indiana

Distribution:

Service will be made electronically on all ECF-registered counsel of record via email generated by the Court's ECF system.

**By United States Mail to:**

**Debbie Maguire  
10525 Old Plantation Drive  
Evansville, IN 47725**